



Charles County Commissioners

REUBEN B. COLLINS, II, ESQ., PRESIDENT

June 8, 2020

VIA EMAIL opinions@oag.state.md.us
AND FIRST CLASS MAIL

Honorable Brian E. Frosh
Maryland Attorney General
200 St. Paul Place
Baltimore, MD 21202

Re: Request for an Opinion of the Attorney General
Community Benefit Host Fees for Waste Transfer Stations

Dear Attorney General Frosh:

I am writing to you in my capacity as President of the Board of County Commissioners for Charles County, Maryland, to request an Opinion of the Attorney General on the following question:

Does Charles County, as a Code Home Rule county, possess the requisite authority, absent General Assembly enabling legislation, to levy a fee on a private waste acceptance transfer facility (the "transfer station") that plans to operate in the County, in return for the County including the transfer station in its Solid Waste Management Plan; with said fees to be used to mitigate against roadway usage, litter generation, traffic congestion, and loss in revenue from waste that would otherwise be subject to fees for disposal at the County-operated landfill.

A legal opinion on this issue from Wes Adams, County Attorney for Charles County Government, is attached to this request. This request involves a substantive question of State law regarding Article XI-F, Section 9 of the Maryland Constitution, that concerns the legality of fees imposed by a code county. The County desires to impose a fee on private operators of a transfer stations in the County and would like clarification as to the need for State enabling legislation to ensure the fee is levied lawfully.

Thank you for your attention in this matter.

Regards,
/s/

Reuben B. Collins, II, Esq.
President
Charles County Board of Commissioners

TO:	Charles County Commissioners
FROM:	Wes Adams, County Attorney <i>Office of the County Attorney</i>
SUBJECT:	Host Fee for Private Waste Acceptance Transfer Facility
DATE:	June 8, 2020

This memorandum is intended to provide the Board of Commissioners with a legal opinion concerning its authority to impose a host fee upon operators of private waste acceptance transfer facilities in the County. A host fee is a fee an operating company pays, either by ton or on a monthly, quarterly or annual basis, to a community to locate, construct, operate and/or expand waste and/or recycling facilities in the community. Operators of such facilities may be met with local opposition to the construction of waste facilities, and to ease such opposition, a local authority may impose some form of host compensation to be paid to the local government, in exchange for their permission to proceed with developing the facility.

As a code home rule form of government, Charles County must adhere to Article XI-F, Section 9 of the Maryland Constitution, that provides "a code county shall not levy any type of tax, license fee, franchise tax, or fee which was not in effect or authorized in the code county at the time it came under the provisions of this Article, until an express authorization of the General Assembly has been enacted for this purpose by a general law which in its terms and effect applies alike to all code counties in one or more of the classes provided for in Section 5 of this Article." In other words, unless in effect in 2002, the year Charles County adopted code home rule, or expressly authorized by the General Assembly, we cannot assess new fees.

The critical question for this analysis is whether the host fee constitutes a new fee, and therefore requires General Assembly authorization prior to implementation, or whether it may be reasonably characterized as another form of a disposal fee which has been charged by the County prior to becoming code home rule, and thus would not run afoul of the prohibition on new fees described in Article XI-F, Section 9, of the Maryland Constitution. There is no question that an explicit host fee imposed upon a transfer station did not exist in 2002 as a private waste acceptance facility has not existed previously in the County. Fees for disposal at the landfill, however, have been imposed since at least 1974, approximately 28 years prior to code home rule adoption. All fees and charges are included in the Commissioners' adopted budget ordinance on an annual basis. These fees for disposal are also described in Chapter 254-7, Code of Charles County, adopted in 1982.

Interpreting the host fee as an extension of previously charged disposal fees would, in the opinion of this Office, be in error because the host fee is not for disposal of waste. The host fee is intended to be charged to a private entity in exchange for allowing them to collect and then transfer, rather than dispose of, waste at the County landfill. Like so many fees imposed by the County, disposal fees are fees for service. The host fee is distinguishable from the disposal fees in that the County is not providing the service of disposing of the waste from the transfer station at the County landfill; the waste is not intended for disposal at the landfill whatsoever, not even on a temporary basis.

In accordance with §9-210(a) of the Environment Article of the Maryland Code, as implemented by 26.04.07 and 26.03.03.05 of the Code of Maryland Regulations, a transfer facility must obtain a State permit for the operation of the transfer station from the Department of the Environment of the State of Maryland. The transfer station must meet all applicable county zoning and land use requirements and conform with the County Solid Waste Plan. The County Solid Waste Plan must be revised to include the transfer station in order to obtain the required MDE permit.

Revision of the Solid Waste Plan is in the discretion of the County, and so, as a condition to amending the Plan, the County may choose, after obtaining necessary General Assembly approval, to enforce a host fee. Additionally, the host fee may be logically justified because of the transfer stations' impact on County roadways that may require more frequent maintenance and improvement of public road facilities designed to serve the needs of the public and the transfer station, as well to mitigate against other nuisances from the collection of waste at the station.

In summary, as a code home rule county, Charles County is prohibited from levying any type of tax, license fee, franchise tax, or fee which was not in effect or authorized in the code county at the time it adopted code home rule, until it has the express authorization of the Maryland General Assembly. While fees for disposal of waste have existed prior to code home rule adoption, these fees are materially different than a host fee, and therefore the host fee should not be classified as a mere expansion of the preexisting disposal fee. The imposition of a host fee appears reasonable and justifiable based on the impact a transfer station is likely to have on the community. However, it is the opinion of this Office that the County may not currently possess the requisite authority to impose the host fee, and should instead seek legislation during the 2021 Session of the Maryland General Assembly in order to resolve any doubt concerning its authority to impose a host fee.